IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

WP(C).No. 19446 of 2005(M)

PETITIONER:

K.S.ABDUL RAHMAN,
S/O.SAYED MUHAMMED, AGED 54 YEARS,
HIGH SCHOOL ASSISTANT (ARABIC), GOVERNMENT
VOCATIONAL HIGHER SECONDARY SCHOOL,
DEVIYAR COLONY, VALARA POST, IDUKKI-685 561.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED
BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, TRIVANDRUM.

2. THE ACCOUNTANT GENERAL (A & E)
KERALA, TRIVANDRUM.

3. THE DEPUTY DIRECTOR OF EDUCATION,
IDUKKI AT THODUPUZHA.

4. THE HEADMASTER,
GOVERNMENT VOCATIONAL HIGHER SECONDARY SCHOOL,
DEVIYAR COLONY, VALARA POST,
IDUKKI-685 561.

BY GOVERNMENT PLEADER SMT. M.R. SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.19446 OF 2005

EXT.P1: COPY OF G.O.(MS)NO.10/81/G.EDN. OF THE GOVERNMENT 12.1.81.

EXT.P2: COPY OF THE G.O.(MS)NO.134/86/G.EDN. OF THE GOVERNMENT.7.8.86

EXT.P3: COPY OF THE G.O.(P)NO.480/89/FIN. OF THE GOVERNMENT.01.11.89

EXT.P4: COPY OF THE G.O.(MS)NO.57/91/(89)/FIN. OF THE GOVERNMENT.18.01.1991

EXT.P5: COPY OF THE G.O.(P)NO.381/97/G.EDN OF THE GOVERNMENT.12.9.1997

EXT.P6: COPY OF THE G.O.(MS)NO.347/2000/G.EDN OF THE GOVERNMENT.19.10.00

EXT.P7: COPY OF THE G.O.(P)NO.938/2001/FIN. OF THE GOVERNMENT. 31.7.2001

EXT.P8: COPY OF THE AUDIT OBJECTION OF THE PETITIONER. NIL

EXT.P9: COPY OF THE LETTER OF THE 3RD RESPONDENT.18.3.2004

EXT.P10: COPY OF THE JUDGMENT IN W.P.(C)NO.11757/2004. 15.7.2004

EXT.P11: COPY OF THE G.O.(MS)NO.552/04/FIN. OF GOVT.25.11.2004

EXT.P12: COPY OF THE G.O.(P)NO.364/04/G.EDN. OF -DO- 30.11.2004

EXT.P13: COPY OF THE OBJECTION OF THE 2ND RESPONDENT.28.12.2004

EXT.P14: COPY OF THE APPEAL PETITION FILED BEFORE THE GOVERNMENT.17.2.05

EXT.P15: COPY OF THE JUDGMENT IN W.P.(C)NO.6100/2005-A17.3.2005

EXT.P16: COPY OF THE ORDER NO.C4/17759/04 OF THE DY. DIRECTOR OF EDUCATION, IDUKKI. 25.05.2005

EXT.P17: COPY OF THE JUDGMENT IN O.P.NO.20866/1999-H 02-06-2005

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)No.19446 OF 2005

Dated this the 26th day of September, 2007

JUDGMENT

The petitioner was a High School Assistant at the time when he filed this writ petition. Prior to his becoming a HSA, he had primary service for the period from 4.2.1975 to 30.9.1976. He was granted higher grade as High School Assistant taking into account the primary service also and his pay was fixed accordingly. Later on the respondents, took the stand that in view of the Full Bench Division in **Krishna Panicker Vs. State of Kerala (1993(2) KLT 1058),** the petitioner's primary service cannot be added to the High School service for the purpose of higher grade, against which the petitioner approached this Court and by Ext.P10 judgment, a learned Single Judge of this Court, relying on the Division Bench judgment in W.A.No.24/04 held that the petitioner is entitled to get his higher grade fixation taking into account the primary service also. Both Ext.P10 judgment as well as the writ appeal judgment referred to therein were taken in appeal to the Supreme Court and the appeals were

dismissed. Consequently the petitioner has become entitled to the original fixation of higher grade is the contention raised by the petitioner. However, now by Ext.P13 order the same has again been denied to him on a fresh ground that his personal pay cannot be counted for the purpose of higher grade. The petitioner's contention is that since Ext.P10 judgment has become final, the petitioner cannot be denied his original fixation on a different ground which the respondents could have and had not raised while passing Ext.P10 judgment.

2. The learned Government pleader on the basis of the counter affidavit filed would submit that notwithstanding Ext.P10, the respondents are entitled to re-fix his higher grade in accordance with law. Going by the Government orders in question, the petitioner is not entitled to fixation of higher grade taking in to account his personal pay also is the contention raised.

3. I have considered the rival contentions in detail. Assuming that the contention of the learned Government

pleader that the personal pay cannot be taken into account, is correct, such a contention is not available to the respondents after Ext.P10, since originally the petitioner was granted the benefit without any reduction of the personal pay, which was later cancelled and that cancellation was held to be bad by Ext.P10 judgment which has become final. Therefore, if at all the respondents could take a contention that special pay could not have been included for the purpose of fixation that contention ought to have been taken by them in the original petition in which Ext.P10 judgment was passed. By virtue of principles of res judicata the respondents cannot take such a contention now. That being so, the impugned orders are liable to be set aside. I do so. There would be a further direction to give all the benefits due to the petitioner based on the original fixation of pay in the higher grade which was the subject matter of Ext.P10 judgment without taking into account Ext.P13. It is now reported that the petitioner had subsequently retired on 31.3.06 and he has been granted only

the benefits minus the amounts directed to be recovered by virtue of Ext.P13 order.

4. In the above circumstances, I direct the respondents to re-compute the retirement benefits due to the petitioner in accordance with the original fixation which was upheld in Ext.P10 judgment and disburse the arrears due to the petitioner. On the basis of the impugned orders any benefits given have been recovered from the petitioner it shall also be refunded to him. This shall be done within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

S. SIRI JAGAN, JUDGE

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